IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel. W.A. DREW EDMONDSON, in his capacity as ATTORNEY GENERAL OF THE STATE OF OKLAHOMA AND OKLAHOMA SECRETARY OF THE ENVIRONMENT C. MILES TOLBERT, in his capacity as the TRUSTEE FOR NATURAL RESOURCES FOR THE STATE OF OKLAHOMA **PLAINTIFFS**

v. **CASE NO.: 05-CV-00329 TCK –SAJ**

TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC., COBB-VANTRESS, INC., AVIAGEN, INC., CAL-MAINE FOODS, INC., CAL-MAINE FARMS, INC. CARGILL, INC., CARGILL TURKEY PRODUCTION, LLC, GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., SIMMONS FOODS, INC. and WILLOW BROOK FOODS, INC. **DEFENDANTS**

TYSON DEFENDANTS' MOTION TO COMPEL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

RULES

TREATISES

Defendants Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Poultry, Inc. and Cobb-Vantress, Inc. (collectively the "Tyson Defendants") move this Court pursuant to Fed. R. Civ. P. 37(a) to enter an order compelling Plaintiffs to answer fully the interrogatories served by the Tyson Defendants on Plaintiffs on May 2, 2006. In support of this Motion to Compel, the Tyson Defendants state the following:

I. INTRODUCTION

Plaintiffs commenced this lawsuit more than eighteen (18) months ago. Plaintiffs allege that reckless and illegal conduct by the Tyson Defendants and other poultry companies has contaminated the soils, water, sediment and biota throughout more than 1,000,000 acres of the Illinois River Watershed ("IRW") to the extent that the alleged contamination poses an imminent and substantial endangerment to human health. *See* First Amended Complaint ("FAC" or "Complaint") ¶¶ 1, 6-9, 31, 50-57, 95, 121, 126, 131, 135 and 138 (Dkt. No. 18). The Complaint includes sprawling generic allegations and strong rhetoric but no specifics concerning the defendants' alleged wrongdoing or Plaintiffs' alleged injuries.

Since the filing of this lawsuit, the defendants have diligently sought to discover the true scope and nature of Plaintiffs' claims and the factual basis, if any, for their contentions. As an attorney and officer of the Court, Mr. Edmondson's signature on the Complaint constitutes a certification that Plaintiffs have "evidentiary support" for these allegations. FED. R. CIV. P. 11(b). Yet, at every turn, Plaintiffs have thwarted defendants' discovery efforts. *See, e.g.,* Tyson Defs. Mot. for More Definite Statement (Dkt. No. 71) and Pltfs. Response in Opposition (Dkt. No. 131); Cobb-Vantress First Mot. to Compel (Dkt. No. 743) and Pltfs. Response in Opposition (Dkt. No. 817); Cargill Mot. to Compel; (Dkt. No. 902) and Pltfs. Response in Opposition (Dkt. No. 912); Tyson Defs. Mot. for Leave to Exceed Numerical Limit on Req. for Adm. (Dkt. No.

949) and Pltfs. Response in Opposition (Dkt. No. 969); and Defs. Mot. for Entry of Case Management Order (Dkt. No. 946) and Pltfs. Response in Opposition (Dkt. No. 978). What has emerged in this case is a clear pattern of obstruction and delay by Plaintiffs.

Even more troubling than Plaintiffs' flouting of its discovery obligations in this case are reports arising from another case which indicate that the Attorney General's office asked a former State employee to destroy documents potentially relevant to this case. In an interview with KFOR TV in Oklahoma City, former Assistant Attorney General, Marie West, details misconduct within the Attorney General's office which is not only shocking but potentially prejudicial to the rights of the defendants in this case to discover all documents and information relevant to this case, including potentially exculpatory documents. A complete transcript of the December 19, 2007, KFOR TV story and Marie West's interview is attached hereto as Exhibit 1. Marie West "was an Assistant Attorney General in the environmental protection unit of the AG's office. West was the assigned lawyer for two state agencies working on the poultry pollution issues . . ." Ex. 1, p. 1. "[S]he was asked [by the Attorney General's office] to lie, to spy on and to give shoddy legal advice to the very state agencies she was employed to represent." *Id.* Ms. West claims she was forced to leave the Attorney General's office after "she blew the whistle on what she calls unethical behavior inside Drew Edmondson's office." *Id.* After Ms. West filed suit against the Attorney General's office, the State approached her with a settlement proposal. One of the conditions that the Attorney General attached to his settlement offer was that Ms. West "would have to take confidential documents and have them destroyed." *Id.* at p.3. While Ms. West refused to be complicit with the State in such clearly inappropriate conduct, other employees in the Attorney General's office might not be so principled.

In light of the pattern of obstruction demonstrated by Plaintiffs, it is imperative that this Court remind Plaintiffs that such tactics will not be tolerated in this case. This motion presents a perfect opportunity for delivering such a message. The Tyson Defendants seek relief from the Court because Plaintiffs refuse to provide straightforward answers to interrogatories. Plaintiffs' "responses" to those interrogatories reflect an utter disregard for the letter and spirit of Rule 33 of the Federal Rules of Civil Procedure. The Tyson Defendants have conferred with Plaintiffs pursuant to FED. R. CIV. P. 37(a)(2)(B) in a good faith effort to resolve this discovery dispute without the necessity of intervention by this Court, but Plaintiffs continue to refuse to answer the interrogatories straightforwardly.[1]

II. TYSON DEFENDANTS' INTERROGATORIES AND PLAINTIFFS' RESPONSES/OBJECTIONS[2]

On May 2, 2006, each of the Tyson Defendants served Plaintiffs with a set of interrogatories. Cobb-Vantress served thirteen (13) interrogatories; Tyson Poultry, Tyson Chicken and Tyson Foods each served eleven (11) interrogatories. These interrogatories asked Plaintiffs, *inter alia*, to specify the basis for their claim that natural resources in the IRW need to be replaced or restored due to contamination, to identify the specific areas of the IRW contaminated with CERCLA hazardous substances, to provide a computation and explanation of Plaintiffs' damages and to identify studies, publications or data supporting Plaintiffs' allegations.

Plaintiffs responded to these interrogatories on June 15, 2006, with a multitude of unfounded objections and the mantra-like claim that "pursuant to Fed. R. Civ. P. 33(d), information sought . . . may be found within the business records being provided to this

[1] The good faith conferral by Cobb-Vantress included several written communications and telephone conferences from June 30, 2006 through January 8, 2007.

[2] In compliance with LCvR 37.2(d), the verbatim discovery requests, responses and objections which are the subject of this motion are attached hereto as Exhibits 2-5 and incorporated herein by reference.

Defendant." *See generally*, Ex. 2, Pltfs. Responses to Separate Defendant Cobb-Vantress, Inc.'s Second Set of Interrogatories; Ex. 3, Pltfs. Responses to Separate Defendant Tyson Poultry, Inc.'s First Set of Interrogatories; Ex. 4, Pltfs. Responses to Separate Defendant Tyson Chicken, Inc.'s First Set of Interrogatories; and Ex. 5, Pltfs. Responses to Separate Defendant Tyson Foods, Inc.'s First Set of Interrogatories. Plaintiffs also attached to their "responses" a five (5) page "Privilege Log" in which they provided extremely generic descriptions of eighteen different documents which presumably are responsive to the interrogatories but were withheld under claims of attorney work-product and attorney-client privilege. Plaintiffs' "responses" are utterly non-responsive. They shed no light on the basis, if any, for the allegations made in this lawsuit. Indeed, Plaintiffs' objections and responses conceal all information required to be disclosed. Rather than candidly answering the interrogatories or stating that they do not know the answers, Plaintiffs have engaged in a classic game of hide the ball. The Tyson Defendants are entitled to straightforward and meaningful answers to these interrogatories.

III. LEGAL AUTHORITY AND ARGUMENT

"Plaintiffs who file lawsuits and put defendants to the expense and trouble to answer, should at least prosecute their actions efficiently and diligently." *Bells Ferry Landing v. Wirtz*, 373 S.E.2d 50, 51 (Ga. App. 1980). In the present case, Plaintiffs' interrogatory "responses" evince a pattern of evasion and stonewalling which should be condemned by this Court. Plaintiffs' "responses" are improper and inadequate in several respects. In many instances, Plaintiffs have not even attempted to answer the interrogatories or have offered incomplete or evasive responses. Plaintiffs also seek to avoid their obligation to answer these interrogatories through nonspecific and improper references to Plaintiffs' "rolling production" of "business records." Finally, Plaintiffs improperly continue to assert that the attorney work-product

privilege and the consulting expert provisions of Rule 26(b)(4) foreclose the Tyson Defendants from discovering through interrogatories the factual basis for their claims. The effect of Plaintiffs' strategy is that the Tyson Defendants have not been provided any documents, data or information on which Plaintiffs rely to support their claims. Plaintiffs are engaged in a game of blindman's bluff which violates both the letter and spirit of Rule 33.

A. Plaintiffs' Interrogatory Answers are Incomplete and Evasive

The duty to respond to interrogatories under Federal Rule 33 requires litigants to disclose responsive information; this duty is not satisfied through incomplete, evasive or circular responses. *See, e.g., Herdlein Techs v. Century Contractors,* 147 F.R.D. 103, 108 (W.D.N.C. 1993) (granting motion to compel where party "has not provided specific responses, but rather has made numerous references to unspecified and ambiguous events."); *J.M. Clemnishaw Co. v. City of Norwich*, 93 F.R.D. 338, 345 (D. Conn. 1981) ("Where the party resisting discovery has responded by objecting to certain interrogatories or requests for production, or has served responses that the party seeking discovery considers to be evasive or incomplete, then the proper remedy is to move for an order compelling answers (or production) under Rule 37(a)") (*citing* 4A MOORE'S FEDERAL PRACTICE P. 37.02(3) at 37-36 (1981 ed.)). "[P]arties must provide true, explicit, responsive, complete and candid answer to interrogatories . . . ." *Hansel v. Shell Oil Corp.*, 169 F.R.D. 303, 305 (E.D. Pa. 1996). "The Federal Rules contemplate candor in answering interrogatories" and evasive or incomplete answers should not be tolerated. *Herdlein*, 147 F.R.D. at 108.

Interrogatory responses must be complete and not evasive. *See, e.g., Truck Treads, Inc. v. Armstrong Rubber Co.*, 818 F.2d 427, 429 (5th Cir. 1987); *White v. Aetna Finance Co.*, 1986 WL 6870, at *6-7 (M.D. Ga. 1986) (plaintiffs' unresponsive and evasive answers to

interrogatories were "substantially unjustified . . . frivolous and vexatious.") "Answers are insufficient if they fail to supply facts which were omitted from the complaint, and if they neither clarify nor narrow the broad issues posed by the complaint." *Rickles, Inc. v. Frances Denney Corp.*, 508 F. Supp. 4, 7 (D. Mass. 1981) (*citing U.S. v. West Virginia Pulp & Paper Co.*, 36 F.R.D. 250 (S.D.N.Y. 1964)). "For purposes of a motion for order compelling discovery, an evasive or incomplete answer is treated as a failure to answer." *Rickles,* 508 F. Supp. at 7 (*citing* FED. R. CIV. P. 37(a)(3)).

Plaintiffs' "responses" to the Tyson Defendants' interrogatories are incomplete and evasive. *See* Ex. 2, Pltfs. Responses to Cobb-Vantress Interrog. Nos. 3, 4, 11; Ex. 3, Pltfs. Responses to Tyson Poultry's Interrog. Nos. 2, 4-8; and Ex. 5, Pltfs. Responses to Tyson Foods' Interrog. Nos. 2, 3, 4, 6. Plaintiffs' Responses to Tyson Poultry's Interrogatory Nos. 4-8 are illustrative. These interrogatories seek to discover basic factual information regarding Plaintiffs' claims that the poultry farmers contracting with the Tyson Defendants have released or discharged poultry litter to the waters of the State of Oklahoma in violation of the Oklahoma Confined Feeding Operations Act, the Oklahoma Registered Poultry Operations Act, the Oklahoma Agricultural Code, the Oklahoma Environmental Quality Act and the Oklahoma Administrative Code. *See* FAC ¶¶ 128-139. Each interrogatory asks Plaintiffs to provide a description of each alleged violation, including the date and location for each violation and the name of the contract producer(s) involved and to identify notices, warnings, complaints, investigative reports, photographs, witness statements and other documents or items of evidence relating to each alleged violation. *See* Ex. 3, Pltfs. Responses to Tyson Poultry's Interrog. Nos. 4-8. Plaintiffs' responses to these five interrogatories are full of objections but devoid of responsive information. Plaintiffs have not identified the date, location or farmer involved in a

single alleged violation of these statutes or their implementing regulations. Instead, Plaintiffs offer only the following circular "response":

> Violations of these provisions have occurred wherever poultry waste for which Tyson Defendant is legally responsible and which was generated at registered poultry feeding operations or applied to land in Oklahoma, without limitation, has not been handled, treated, or managed in accordance with the requirements of the Poultry Act and associated rules; has not been managed in accordance with an operation's Animal Waste Management Plan and Best Management Practices; has been applied to land at inappropriate times or excessive rates or without regard to soil and waste test results; has been applied without required soil and waste testing; has been managed without keeping records of application or transfer; has been improperly stored and exposed to rainfall and runoff; or has been applied to land without appropriate runoff controls. Additionally, violations of these provisions have occurred, without limitation, wherever poultry waste or associated pollutants for which Tyson Defendant is legally responsible and which was generated at registered poultry feeding operations or applied to land in Oklahoma, without limitation, have been discharged or runoff into waters of the state in those portions of the IRW located within Oklahoma, including surface water, groundwater, from storage or land application sites; have been discharged or run off causing violations of sate water quality standards; or where the handling, treatment and removal of such waste has created an environmental or a public health hazard or resulted in the contamination of waters of the state in those portions of the IRW located within Oklahoma, including surface and ground water. The State's investigation of these matters is continuing.

Ex. 3, Pltfs. Responses to Tyson Poultry's Interrog. No. 4; *See also* Ex. 3, Pltfs. Responses to Tyson Poultry's Interrog. Nos. 5-8 (materially identical responses).

This is sheer gibberish. It is also the sort of gamesmanship that is condemned by the Federal Rules. Plaintiffs' responses to these and other interrogatories shed no light on the nature of Plaintiffs' claims or the evidence, if any, that Plaintiffs have to support those claims. If Plaintiffs know of specific violations by poultry farmers of the statutes and regulations referenced in the Complaint, then they are required to set forth that information in response to these interrogatories. If Plaintiffs brought this lawsuit without knowing of a single specific violation by a poultry farmer under contract with the Tyson Defendants of the statutes and regulations referenced in the Complaint, then they should be compelled formally to acknowledge

that in their interrogatory responses. *See Hansel*, 169 F.R.D. at 305 ("If a party is unable to supply the requested information, the party may not simply refuse to answer, but must state under oath that he is unable to provide the information . . . .") Plaintiffs should not be permitted to conceal the bankruptcy in proof behind this case through evasive and incomplete responses to interrogatories.

B. Plaintiffs' Rule 33(d) Elections Are Improper and Do Not Excuse them from Answering the Interrogatories

Plaintiffs have invoked Federal Rule 33(d) in an attempt to avoid directly answering twenty-two (22) of the interrogatories at issue in this motion. *See* Ex. 2, Pltfs. Responses to Cobb-Vantress Interrog. Nos. 4, 5, 8 and 14; Ex. 3, Pltfs. Responses to Tyson Poultry's Interrog. Nos. 1, 3-7; Ex. 4, Pltfs. Responses to Tyson Chicken's Interrog. Nos. 2, 5, 6 and 10; and Ex. 5, Pltfs. Responses to Tyson Foods' Interrog. Nos. 3-8 and 11. Plaintiffs are clearly using Rule 33(d) in an improper manner to the prejudice of the Tyson Defendants.

Rule 33(d) of the Federal Rules permits a party in limited circumstances to refer another party to specific business records in lieu of providing a narrative answer to an interrogatory. However, Rule 33(d) is "not a procedural device for avoiding the duty to give information." *In re Master Key*, 53 F.R.D. 87, 90 (D. Conn. 1971). "[T]he provision cannot be used as a procedural device for avoiding this duty by shifting to the interrogating party the obligation to find out whether information is ascertainable from the records which have been tendered. The Rule only permits a shift in the burden of extricating the information once the respondents have specified the records from which the answers can be derived or ascertained." *Option to Produce Business Records*, 23 AM. JUR. 2D DEPOSITION AND DISCOVERY § 134 (2006) (*citing Budget Rent-A-Car of Mo. v. Hertz Corp.*, 55 F.R.D. 354 (W.D. Mo. 1972)); *see also, In re Master Key*, 53 F.R.D. 87, 90 (D. Conn. 1971).

Because Rule 33(d) is a burden shifting provision, its use is limited to narrow circumstances. If used excessively and not closely monitored by the court, the Rule 33(d) option is easily abused to the substantial prejudice of parties seeking legitimate discovery. *William Houdstermaatschaapij BV v. Apollo Computer, Inc.*, 707 F. Supp. 1429, 1440 (D. Del. 1989). ("Here again, defendant is abusing a discovery privilege [under Rule 33(d)] to frustrate plaintiff's legitimate discovery attempts.")

Rule 33(d) can only be invoked when the answer to an interrogatory can be found within the responding party's business records and when the burden of extracting information from those records is the same for both parties. As such, a court should be suspicious when Rule 33(d) is invoked by the government. *See Hoffman v. United Telecommunications, Inc.*, 117 F.R.D. 436, 439 (D. Kan. 1987) (denying Rule 33(d) option to EEOC in part because government files inherently include records prepared and submitted by regulated parties); *In re Bilzerian,* 190 B.R. 964, 967 (M.D. Fla. 1995) (questioning but not deciding whether SEC files could constitute "business records" under Rule 33(d)).

1. Rule 33(d) is an Improper Response to Contention Interrogatories

The Rule 33(d) option is generally not available with respect to interrogatories aimed at understanding the contentions of the responding party or discovering the alleged basis of allegations made by the responding party. In *Hoffman,* a government litigant improperly invoked Rule 33(c)[3] in response to "interrogatories [that sought] information about the claims of the plaintiff-intervenor in the case." 117 F.R.D. 436, 438 (D. Kan. 1987). There, the court

[3] The provision currently codified in Rule 33(d) was previously contained in Rule 33(c). The change in location of this provision occurred when an new subsection of Rule 33 was added in 1993. *See* FED. R. CIV. P. 33, 1993 Amendment Advisory Note. Consequently, case law discussing the option to produce business records under Rule 33 prior to 1993 generally refers to this option as being found in Rule 33(c).

recognized the absurdity of a plaintiff instructing a defendant to figure out for itself what the plaintiff was alleging by reviewing the plaintiff's "business records." The court stated it "will not require defendants to fathom what plaintiff-intervenor may elect to contend as claims from the thousands of documents which have been produced." *Id.*

Rule 33(d) invocations in response to "contention" interrogatories were similarly rejected in *Continental Illinois Nat'l Bank & Trust Co. of Chicago v. Caton*, 136 F.R.D. 682 (D. Kan. 1991). The defendant in that case propounded interrogatories asking for a statement of facts and identification of documents which "support or tend to support" various "contentions" made by the plaintiff. *Id.* at 685-86, 88. The plaintiff responded by producing a mass of documents and invoking Rule 33(c). The Court held this was improper.

> Plaintiff's argument that defendant can discern from the general mass, exactly what plaintiff claims defendant did or did not do, or both, as well as plaintiff can, is almost absurd. Only plaintiff and its lawyers know what evidence, as opposed to all the information it has discovered, it intends to offer at trial and the relationship of that evidence to its theories of recovery and claims against [defendant].

Id. at 689. The court further remarked:

> [t]he court can well understand, at this stage of the case, why [defendant] would want to try to pin plaintiff down to specifics, so he can learn what he must defend in court. The court believes each defendant is entitled to that information before trial and that it is not unduly burdensome, oppressive or inappropriate to require plaintiff to finally be brought to quarter and state its position, as to each count, with specific particularity, and disclose the evidence upon which it is going to rely at trial rather than referring to a mass of deposition transcripts, records and documents from which a defendant is supposed to winnow and glean, if he can, the relevant from the non-relevant, the wheat from the chaff, the jewels from the junk, as it were.

Id. at 689-90; *see also, Martin v. Easton Publishing Co.*, 85 F.R.D. 312, 315 (E.D. Pa. 1980) ("Defendants are entitled to know the factual content of plaintiff's claims with a reasonable degree of precision.").

Many of the interrogatories to which Plaintiffs elected to respond by referencing a general mass of documents under Rule 33(d) are contention interrogatories akin to those in *Hoffman* and *Caton*. These interrogatories seek specific information and support regarding Plaintiffs' contentions and the facts or documents which they intend to use to support their claims. For example, Tyson Chicken Interrogatory No. 10 asks Plaintiffs to identify reports, studies or sampling data which they "contend establishes or tends to establish" their allegation that the IRW has been adversely impacted "as a result of the release of copper or copper compounds." Ex. 4, Pltfs. Response to Tyson Chicken Interrog. No. 10. In their response, Plaintiffs refer defendants to other interrogatory responses that list studies that are not responsive but then state "in further response to this Interrogatory and pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and whose production is not objected to herein, may be found within the business records being provided to this Defendant." *Id.* Similarly, Tyson Foods' Interrogatory No. 11 asked Plaintiffs to "describe all evidence and identify all documents you contend support your allegation that the actions or inactions of any Tyson Defendant pose an imminent and substantial endangerment to the environment in the IRW, and in so doing, please state for each such action or inaction, the specific conduct and Tyson Defendant you contend is responsible, and describe the specific endangerment." Ex. 5, Pltfs. Responses to Tyson Foods' Interrog. No. 11. Plaintiffs' response is limited to work-product objections, references to other interrogatory responses which are not responsive and the following statement:

> pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and whose production is not objected to herein, may be found within the business records being provided to this Defendant. Identification of such business records will occur on a rolling basis as the State's review of its business records proceeds.

Id. Perhaps Plaintiffs should have reviewed their "business records" to see if they had evidence of the "imminent and substantial endangerment" they alleged before filing the Complaint.

Plaintiffs, likewise, improperly rely on Rule 33(d) in responses to numerous other contention interrogatories. *See* Ex. 2, Pltfs. Responses to Cobb-Vantress Interrog. Nos. 4 and 5; Ex. 3, Pltfs. Responses to Tyson Poultry's Interrog. Nos. 4-8; and Ex. 4, Pltfs. Responses to Tyson Chicken's Interrog. Nos. 2 and 6. This tactic is inappropriate and should not be tolerated by this Court.

2. Plaintiffs' Rule 33(d) Designations Are Non-Committal and, Therefore, Improper

Regrettably, the problems with Plaintiffs' Rule 33(d) elections are not limited to the contention interrogatories discussed above. Even in those instances where the interrogatory is one which could conceivably permit a Rule 33(d) response, the manner in which Plaintiffs have exercised that option is wholly improper. Plaintiffs stop well short of representing that the answers to interrogatories are actually contained within documents being produced under Rule 33(d). The mantra of Plaintiffs' Rule 33(d) elections is that "information sought in this Interrogatory, and whose production is not objected to herein, may be found within the business records being provided to this Defendant." *See* Ex. 2, Pltfs. Responses to Cobb-Vantress Interrog. Nos. 4, 5, 8 and 14; Ex. 3, Pltfs. Responses to Tyson Poultry's Interrog. Nos. 1, 3-7; Ex. 4, Pltfs. Responses to Tyson Chicken's Interrog. Nos. 2, 5, 6 and 10; and Ex. 5, Pltfs. Responses to Tyson Foods' Interrog. Nos. 3-8 and 11. Correspondence received from Plaintiffs in connection with state agency document productions confirms the extent to which Plaintiffs are merely obstructing discovery when they invoke Rule 33(d). For example, Plaintiffs invoked Rule 33(d) in their November 22, 2006, letter to "defense counsel" with respect to Oklahoma

Department of Environmental Quality documents being made available in response to a subpoena from Defendant Peterson Farms. In that letter, Plaintiffs state:

> The State has attempted to determine which boxes of documents respond to . . . interrogatories for which the State has previously indicated it will rely upon documents pursuant to Rule 33(d) for its response. . . . However, given the number, the breadth and the degree to which the many requests for production and interrogatories overlap, it is impossible to comprehensively state each and every request for production or interrogatory to which documents in each box respond. Therefore, it is the responsibility of examining counsel [i.e., defense counsel] to review the documents produced for responsiveness . . . .

Ex. 6, Nov. 22, 2006, Correspondence from R. Nance. The indices referenced in Mr. Nance's letter suffer from the same deficiencies. Plaintiffs claim only that these indices identify boxes of documents which may contain information responsive to the Tyson Defendants' interrogatories. However, the preamble to these indices provides:

> Attached is an index of documents by box which may be responsive to certain defendant's interrogatories . . . [T]here may be responsive documents not represented on the attached chart that are being produced to you. We have identified categories of documents that may be responsive to your individual requests, however other documents may be responsive to your individual requests as well.

Ex. 7, OWRB Document Production Statement and Index. Plaintiffs' empty references are non-committal and improper as a matter of law. "[T]he party invoking the option provided by Rule 33(c) may not do so if all which can be said is that the answer 'might' be found in the records; the party invoking the option must be able to represent that the party will be able to secure the information which is sought by the interrogatory in the records." *Sabel v. Mead Johnson & Co.*, 110 F.R.D. 553, 555 (D. Mass. 1986).

> It would be antipathetic to the spirit of the discovery rules to assume that the newly added Rule 33(c) was intended to diminish the duty of the parties to provide all information requested. Since a respondent is required to answer proper interrogatories, it is not plausible to assume that a response that an answer may (or may not) be found in its records, accompanied by an offer to permit their inspection is sufficient. This is little more than an offer to play the

> discredited game of blindman's bluff at the threshold level of discovery. . . . If the answers lie in the records of the [party], they should say so; and if, on the other side, they do not, they should say that.

In re Master Key, 53 F.R.D. 87, 90 (D. Conn. 1971) (*citing J.J. Delaney Carpet Co. v. Forest Mills, Inc.*, 34 F.R.D. 152, 153 (S.D.N.Y. 1963)); *see also Puerto Rico Aqueduct & Sewer Authority v. Clow Corp.*, 108 F.R.D. 304, 307 (D. Puerto Rico 1985) ("It is insufficient for [plaintiff] to answer that the information requested may or may not be found []" in records produced under Rule 33(d)).

3. Plaintiffs' References Lack the Specificity Required Under Rule 33(d)

Plaintiffs have not identified a single specific document or category of documents in their responses to the interrogatories. Instead they simply refer generically to "business records" and their planned "rolling production" of such records. *See* Ex. 2, Pltfs. Responses to Cobb-Vantress Interrog. Nos. 4, 5, 8 and 14; Ex. 3, Pltfs. Responses to Tyson Poultry's Interrog. Nos. 1, 3-7; Ex. 4, Pltfs. Responses to Tyson Chicken's Interrog. Nos. 2, 5, 6 and 10; and Ex. 5, Pltfs. Responses to Tyson Foods' Interrog. Nos. 3-8 and 11. The indices produced by Plaintiffs as part of the depositions of records custodians of various state agencies are equally vague and non-specific. There, Plaintiffs do attempt to cross-reference boxes of documents with multiple interrogatories of various parties. *See* Ex. 7, OWRB Document Production Statement and Index. However, Plaintiffs reference dozens of boxes of generically described materials without identifying the documents within those broad references that actually answer a specific interrogatory. *Id.*

"Plaintiff cannot escape [its] responsibility of providing direct, complete and honest answers with the cavalier assertion that required information can be found in [a] massive amount of material." *Martin*, 85 F.R.D. at 315. Thus, a party's obligation under Rule 33(d) is not satisfied through broad references to boxes of materials or thousands of pages of documents. *See*

In re Bilzerian, 190 B.R. 964, 965 (Bankr. M.D. Fla. 1995) ("references to documents furnished in more than twenty-eight boxes without specifying the particular documents . . . clearly were not sufficiently identified to comply with the requirement of Fed. R. Civ. P. 33(d)"); *Budget-Rent-A-Car of Missouri v. Hertz Corp.*, 55 F.RD. 354 (W.D. Mo. 1972). Likewise, providing a non-specific "index" of voluminous document productions, as Plaintiffs have done here, does not suffice under Rule 33(d). *See Sabel,* 110 F.R.D. at 556. ("I find the index is not of much help in determining where, in the 154,000 pages of documents, the plaintiff might look to obtain the information sought.")

The broad and generalized nature of Plaintiffs' Rule 33(d) designations in this case violate both the letter and spirit of Rule 33. Plaintiffs' interrogatory "responses" are so amorphous and imprecise that the Tyson Defendants know no more about the nature of, and evidence supporting, Plaintiffs' claims than they did before propounding the interrogatories. Plaintiffs brazenly have flouted their discovery obligations. The mere fact that the Plaintiffs are the "government" and purport to represent a broad network of government agencies and citizens does not excuse or even lessen their discovery obligations. To the contrary, the rights and protections underlying Rule 33 and other discovery rules are essential to any citizen's right to defend against lawsuits brought by the government. *Equal Employment Opportunity Commission v. Anchor Continental, Inc.*, 74 F.R.D. 523 (D. S.C. 1977). The discovery misconduct of the government in *Anchor* and the resulting prejudice to the defendant is remarkably similar to what has occurred in this case. In *Anchor*, the EEOC brought suit against a corporate defendant alleging unlawful employment practices. *Id.* at 524. Like the Tyson Defendants here, the defendant in *Anchor* served interrogatories. The court described those interrogatories as "[a]n attempt by defendant to find out what the case is all about; whether the plaintiff has an action;

what acts of alleged discrimination in employment allegedly occurred and other facts necessary to defendant to prepare a proper defense." *Id.* at 525. Like the Plaintiffs here, the EEOC refused to answer the interrogatories forthrightly. Instead, the EEOC "attempted to exercise a claimed option it has under Rule 33(c)" while simultaneously asserting that the "answers to certain interrogatories and the production of certain documents are protected by 'attorney's work product privilege'." *Id.* After reviewing the files which the EEOC tendered under Rule 33(c) and those being withheld under claims of "attorney work product", the court called an end to the government's abusive charade.

> [T]he Court is convinced that the plaintiff is using Rule 33(c) and its claim of . . . 'attorney's work product' to hide the fact that plaintiff has a weak case and hopes to harass the defendant into making some type of settlement. 'Bluff and harass' are the nicest words to describe the action of the plaintiff. 'Extortion' would probably be more appropriate. . . . The United States District Court for the District of South Carolina will not be a party to an effort by a government agency to harass or coerce anyone into making a settlement of a questionable claim. . . . The pre-suit process is well under way and has as its goal the wearing down of the defendant's will or financial means with which to defend itself in the hope of settling before a trial reveals the admitted weakness of its case. . . . If two parties have a conflict and one seeks to resolve the conflict by coercive or bluffing tactics prior to coming to court, this is no concern of the Court. However, once the action is filed in the United States District Court, the Judge becomes an active participant in the proceedings to see that there is a just, speedy and inexpensive determination of the suit.

Id. at 526, 528. After reprimanding the government for its oppressive and evasive discovery tactics, the court granted the defendant's motion to compel. The court noted that "to allow the EEOC to proceed on its present course of action in this case without revealing the facts to the defendant would not be in keeping with the Court's responsibility to seek justice in every case." *Id.* at 529.

The Tyson Defendants are in the same position as the defendant being abused by the government in *Anchor*. They have been sued by the State for generically alleged wrongdoing.

Yet, when the Tyson Defendants have the audacity to serve interrogatories on their governmental adversary seeking the specifics facts and evidence allegedly supporting these claims, Plaintiffs shamelessly hide behind Rule 33(d) and the attorney work-product doctrine. Plaintiffs should not be permitted to rest on improper Rule 33(d) designations. Accordingly, the Tyson Defendants request entry of an order compelling Plaintiffs to respond specifically to Cobb-Vantress Interrogatory Nos. 4, 5, 8 and 14, Tyson Poultry Interrogatory Nos. 1, 3-7, Tyson Chicken Interrogatory Nos. 2, 5, 6 and 10 and Tyson Foods' Interrogatory Nos. 3-8 and 11.

C. Plaintiffs' "Attorney Work-Product" and "Expert Opinion" Objections are Invalid

Plaintiffs' interrogatory responses continue to assert an expansive and unprecedented view of the attorney work-product doctrine and the consulting expert witness protections. In fact, Plaintiffs objected to all 46 interrogatories on the basis of Rules 26(b)(3) and 26(b)(4). *See* Ex. 2, Pltfs. Responses to Cobb-Vantress Interrogs.; Ex. 3, Pltfs. Responses to Tyson Poultry's Interrogs.; Ex. 4, Pltfs. Responses to Tyson Chicken's Interrogs.; and Ex. 5, Pltfs. Responses to Tyson Foods' Interrog. Plaintiffs object not just to the disclosure of opinions held by experts, but also to having to include in any answer to an interrogatory "information known" by experts. *Id.* Plaintiffs also object to the production "of documents or tangible things prepared in anticipation of litigation" despite the fact that the discovery at issue is interrogatories which seek only the identification of facts and documents. *Id.*[4]

[4] Plaintiffs also attached a privilege log to their interrogatory responses. The Tyson Defendants are confused by this practice given that the discovery at issue is interrogatories and not document requests. Rule 33(d)'s provisions on "business records" is the only authority under which a party may answer an interrogatory with a document. Plaintiffs cannot simultaneously assert that a document is a business record and privileged attorney work-product; nor can they avoid the obligation to answer an interrogatory by referring under Rule 33(d) to documents being withheld. Rule 33(d) plainly requires that that documents identified be made available for inspection and copying. FED. R. CIV. P. 33(d).

As this Court is well aware, Plaintiffs have made the preposterous claim that information such as test data and photographs of litter spreading trucks is "privileged" information which they need not disclose. *See* Cobb-Vantress First Mot. to Compel (Dkt. No. 743) and Pltfs. Response in Opposition (Dkt. No. 799); *see also*, Tr. 12/15/05 Hrg., p. 52, lns. 52-53 (The Court challenged Plaintiffs' claim of privilege regarding photographs by commenting "a picture of a truck driving down the street . . . ; that doesn't seem to require a lot of expert analysis.") The Tyson Defendants will not repeat here the plethora of cases holding that such objections are improper. *See* Cobb-Vantress First Mot. to Compel (Dkt. No. 743) (cases cited therein); Cobb-Vantress Reply in Support of Mot. to Compel (Dkt. No. 864) (cases cited therein). However, a few points, specific to Plaintiffs' misuse of privilege objections in response to the interrogatories at issue in this motion, must be made.

First, Plaintiffs have expanded their "work-product" and "expert material" objections in an attempt to justify withholding information they are mandated to produce under Rule 26(a)(1)(B). That rule requires Plaintiffs to include in their initial disclosures "a computation of any category of damages claimed by the disclosing party" and an identification of documents "on which such computation is based, including materials bearing on the nature and extent of injuries suffered." FED. R. CIV. P. 26(a)(1)(B). Of course, Plaintiffs' initial disclosures did not include any of the information required by Rule 26(a)(1)(B). Consequently, in two separate interrogatories, the Tyson Defendants sought the information Plaintiffs were required to disclose voluntarily. Tyson Foods' Interrogatory No. 2 asked Plaintiffs to:

> Please describe in detail and by category the nature and amount of damages you are seeking to recover in this lawsuit, the specific calculation utilized to arrive at each specific damage type and amount and identify all documents that relate to such damages and calculations.

Ex. 5, Tyson Foods' Interrog. No. 2. Similarly, Ex.2, Cobb-Vantress Interrogatory No. 4 requested Plaintiffs to provide facts and information regarding the nature and extent of specific injuries they allegedly suffered.

> To the extent the State is seeking to recover damages for injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction, or loss resulting from the acts or omissions of the defendants in this Lawsuit, please:
>
> > (a) Identify all natural resources which you contend have been injured, lost or destroyed to such a degree that the State believes it is entitled to damages for the cost of replacing or restoring such natural resources;
> >
> > (b) state all facts which you believe support a claim that the injury to each identified natural resource is of a nature and magnitude sufficient to support a claim for damages to replace or restore each such natural resource;
> >
> > (c) provide the amount of estimated costs the State believes would be necessary to replace or restore the natural resource; and
> >
> > (d) describe the methodology you have used or intend to use to arrive at an estimate of these costs or damages.

Ex. 2, Cobb-Vantress Interrog. No. 4. Plaintiffs flatly refused to provide any of the information sought in these interrogatories under specious claims of work-product and the consulting expert provisions of Rule 26(b)(4). Plaintiffs' objections run directly afoul of the Federal Rules' express mandate that such information be supplied immediately. *See* FED. R. CIV. P. 26(a)(1)(B).

Second, Plaintiffs' use of boilerplate privilege objections in response to every interrogatory is contemptuous. "Such pat, generic, non-specific objections, intoning the same boilerplate language, are inconsistent with both the letter and the spirit of the Federal Rules of Civil Procedure." *Obiajulu v. City of Rochester*, 166 F.R.D. 293, 295 (W.D. N.Y. 1996). Numerous courts have held that populating responses to interrogatories with stereotyped and

conclusional objections, such as Plaintiffs have done here, renders such responses "willfully inadequate and evasive." *Hernandez v. State*, 408 S.E.2d 160, 161 (Ga. App. 1991); *see also Obiajulu*, 166 F.R.D. at 295 ("[A] general claim of privilege, be it work-product or attorney client, is an inadequate response to a discovery request."). A party withholding information on the basis of a claim of privilege must describe the information being withheld "with sufficient detail to allow a reasoned determination as to the legitimacy of the claimed privilege." *Lundy v. Interfirst Corp.*, 105 F.R.D. 499, 504 (D. D.C. 1985). Blanket assertions of privilege through boilerplate language copied and pasted into every interrogatory response are simply not sufficient. *See, e.g., United States v. El Paso Co.*, 682 F.2d 530, 539 (5th Cir. 1982) (privilege claims "many not be tossed as a blanket over an undifferentiated group of documents."); *Pippenger v. Gruppe*, 883 F. Supp. 1201, 1212 (S.D. Ind. 1994) (plaintiffs' bald assertion of work product was insufficient). If Plaintiffs truly believe that information responsive to specific interrogatories is privileged, they bear of burden of detailing the nature of the information withheld and the basis for their claim of privilege specifically in response to each interrogatory.

Third, Plaintiffs claim that discovery of basic factual information such as that sought in these interrogatories constitutes an improper attempt by the Tyson Defendants to jump-start the expert discovery phase of this case. Plaintiffs argue that discovery of information "known by experts" is "premature" under Fed. R. Civ. P. 26(b)(4) until "this Court establish[es] a trial date to trigger the obligation of expert disclosure 90 days in advance of trial . . . ." Ex. 2, Pltfs. Responses to Cobb-Vantress Interrogatories. Plaintiffs' position is legally unsupportable and their excuses for not answering these interrogatories with the information they currently possess are frivolous and insufficient. *See King v. E.F. Hutton & Co., Inc.*, 117 F.R.D. 2, 4 (D. D.C. 1987) ("It is no answer for Plaintiffs to assert that they will need discovery or to consult with an

expert to determine their losses. They should have answered the interrogatories with such information as they then possessed.")

Puerto Rico Aqueduct & Sewer Authority v. Clow Corp. 108 F.R.D. 304 (D. Puerto Rico 1985), like this case, involved a lawsuit brought by the government against multiple corporate defendants. The defendants in that case, like the Tyson Defendants here, served interrogatories seeking to discover the scope and nature of plaintiffs' claims and any evidence supporting those claims. The plaintiff in that case, like Plaintiffs in this case, objected on the grounds that it had not yet identified its "testifying experts" and discovery of information known by "consulting experts" was prohibited under Rule 26(b)(4). The court overruled those objections and held that Rule 26(b)(4) "precludes the *identification* of information as the work of a non-testifying expert, but does not prohibit the discovery of the *information* itself." *Id.* at 311 (emphasis in original) (*citing Marine Petroleum Co. v. Champlin Petroleum Co.*, 641 F.2d 984, 994 (D.C. Cir. 1980)). The court also found significant that,

> This complaint was filed more than three years ago. More than two years have passed since defendants propounded interrogatories, and a year has gone by since they filed motions to compel. Yet, [Plaintiff] 'has not determined' its testifying experts. While the case is complex, this Magistrate has resolved, as the parties are aware of from our last reunion, that this case will, unlike fine wine, not reach its vintage.

Id. at 310-11. Just as in *Puerto Rico Aqueduct & Sewer,* Plaintiffs here cannot withhold factual information under Rule 26(b)(4). Moreover, this case was filed more than one and one half years ago. Plaintiffs are required to provide the basic factual information sought in the interrogatories now. Plaintiffs' "work product" and "expert material" objections should be overruled and Plaintiffs should be ordered fully to respond to all 46 interrogatories.

D. Plaintiffs' Objection to the Number of Interrogatories is Unfounded

Plaintiffs claim that Rule 33(a)'s limit of twenty-five interrogatories per defendant has been exceeded by the Tyson Defendants and, therefore, Plaintiffs do not have to answer some interrogatories. In particular, Plaintiffs refuse to answer three of the interrogatories under a tortured interpretation of Rule 33. *See* Ex. 2, Pltfs. Responses to Cobb-Vantress Interrog. No. 10; Ex. 3, Pltfs. Responses to Tyson Poultry's Interrog. No. 2; and Ex. 5, Pltfs. Responses to Tyson Foods' Interrog. No. 9. Although three Tyson Defendants propounded only 11 interrogatories each and a fourth Tyson Defendant propounded only 13, Plaintiffs claim that they have discerned many "discrete subparts" which, if counted as separate interrogatories, would cause three of the Tyson Defendants to exceed the limit of 25 interrogatories.

Plaintiffs' "discrete subpart" argument was the subject of a prior discovery dispute involving another defendant. Plaintiffs refused to answer interrogatories of Defendants Cargill, Inc. and Cargill Turkey Production, L.L.C. claiming that "discrete subparts" in the 35 interrogatories propounded by these two defendants pushed the true number of interrogatories propounded to 164. 10/24/06 Order, p. 2 (Dkt. No. 956). The Cargill Defendants filed a motion to compel. *See* Cargill Mot. to Compel (Dkt. No. 902). This Court granted that motion and ordered Plaintiffs to answer the interrogatories. 10/24/06 Order, p. 3 (Dkt. No. 956). Significantly, the Court "decline[d] to piecemeal each interrogatory to determine whether or not Defendants have remained within the limit of 25 interrogatories." *Id.* Instead, the Court "reviewed the discovery and concluded it is reasonable." *Id.* The Court invited the parties to construe its Order either as "a grant of permission to serve additional interrogatories in excess of the permitted 25, or as a finding that the proposed interrogatories do not exceed the requisite 25 .

. . ." *Id.* Notwithstanding this ruling, Plaintiffs refuse to withdraw their "discrete subpart" objections to several interrogatories of Tyson Defendants.

As this Court recognized in its October 24, 2006 Order, "[l]egitimate discovery efforts should not have to depend upon linguistic acrobatics, nor should they sap the court's limited resources in order to resolve hypertechnical disputes." 10/24/06 Order, p. 3 (Dkt. No. 956) (*quoting Ginn v. Gemini, Inc.,* 137 F.R.D. 320 (D. Nev. 1991)). "The aim [of this provision] is not to prevent needed discovery, but to provide judicial scrutiny before parties make potentially excessive use of this discovery device." *See* FED. R. CIV. P. 33, 1993 Comment. Accordingly, the federal courts have avoided hypertechnical constructions of "discrete subparts" opting instead for a "related questions" or "common theme" standard. *See, e.g., Nyfield v. Virgin Islands Tel. Corp.*, 200 F.R.D. 246, 247-48 (D.V.I. 2001); *Williams v. Bd. of Cty. Comm'rs of Unified Gov't of Wyandotte Cty. and Kansas City, Kan.*, 192 F.R.D. 698, 701 (D. Kan. 2000); *Ginn v. Gemini, Inc.,* 137 F.R.D. 320, 322 (D. Nev. 1991); *Clark v. Burlington N. R.R.*, 112 F.R.D. 117, 120 (N.D. Miss. 1986). Under this test, "an interrogatory is to be counted as a single question . . . even though it may call for an answer containing several separate bits of information, if there is a direct relationship between the various bits of information called for." *Clark*, 112 F.R.D. at 118 (counting as one interrogatory a request for "(a) the full name, number or other designation of the train; (b) the name of the manufacturer of each of the train's engines, the manufacturer's serial number and manufacturer's model number; (c) the number of cars included in the train; and (d) the weight and contents of each car, including the engines, of the train.")

Each of the 46 interrogatories served by the Tyson Defendants are appropriately viewed as a single interrogatory. Each interrogatory focuses on a specific subject. To the extent that an

interrogatory calls for "multiple bits of information," the bits of information sought are directly related to the subject of the interrogatory. Plaintiffs' attempt to thwart discovery by artificially subdividing interrogatories into "discrete subparts" which simply do not exist should not be countenanced by this Court. Plaintiffs' "discrete subpart" objections should be overruled. Moreover, to avoid unnecessary future discovery disputes, the Tyson Defendants request a finding by the Court that they the interrogatories attached hereto as Exhibits 2-5 consist of 46 interrogatories, including discrete subparts.

IV. CONCLUSION

Plaintiffs' objections to the Tyson Defendants' interrogatories are unfounded and their responses are inadequate. Accordingly, the Tyson Defendants respectfully request entry of an order pursuant to Rule 37(a)(2)(B) striking Plaintiffs' Rule 33(d) responses, overruling Plaintiffs' discrete subpart, attorney work-product and consulting expert objections and directing Plaintiffs to directly and completely answer each of the interrogatories with all information known or otherwise available. Moreover, the Tyson Defendants are entitled to an award of their reasonable expenses and attorneys' fees incurred in the making of this Motion pursuant to Rule 37(a)(4)(A).

Respectfully submitted,

KUTAK ROCK LLP

By: /s/ Robert W. George

Robert W. George, OBA #18562
The Three Sisters Building
214 West Dickson Street
Fayetteville, AR 72701-5221
(479) 973-4200 Telephone
(479) 973-0007 Facsimile

-and-

Stephen Jantzen, OBA #16247
Paula Buchwald, OBA# 20464
Patrick M. Ryan, OBA #7864
RYAN, WHALEY & COLDIRON
900 Robinson Renaissance
119 North Robinson, Suite 900
Oklahoma City, OK 73102
(405) 239-6040 Telephone
(405) 239-6766 Facsimile

-and-

Thomas C. Green, *appearing pro hac vice*
Mark D. Hopson, *appearing pro hac vice*
Timothy K. Webster, *appearing pro hac vice*
Jay T. Jorgensen, *appearing pro hac vice*
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005-1401
(202) 736-8000 Telephone
(202) 736-8711 Facsimile

Attorneys for Defendant Cobb-Vantress, Inc.

CERTIFICATE OF SERVICE

I certify that on the 11th day of January 2007, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General — drew_edmondson@oag.state.ok.us
Kelly Hunter Burch, Assistant Attorney General — kelly_burch@oag.state.ok.us
J. Trevor Hammons, Assistant Attorney General — trevor_hammons@oag.state.ok.us
Robert D. Singletary, Assistant Attorney General — robert_singletary@oag.state.ok.us

Douglas Allen Wilson — doug_wilson@riggsabney.com
Melvin David Riggs — driggs@riggsabney.com
Richard T. Garren — rgarren@riggsabney.com
Sharon K. Weaver — sweaver@riggsabney.com
RIGGS ABNEY NEAL TURPEN ORBISON & LEWIS

Robert Allen Nance — rnance@riggsabney.com
Dorothy Sharon Gentry — sgentry@riggsabney.com
RIGGS ABNEY

J. Randall Miller — rmiller@mkblaw.net
David P. Page — dpage@mkblaw.net
Louis W. Bullock — lbullock@mkblaw.net
MILLER KEFFER & BULLOCK

Elizabeth C. Ward — lward@motleyrice.com
Frederick C. Baker — fbaker@motleyrice.com
William H. Narwold — bnarwold@motleyrice.com
MOTLEY RICE
COUNSEL FOR PLAINTIFFS

A. Scott McDaniel — smcdaniel@mcdaniel-lawfirm.com
Nicole Longwell — nlongwell@ mcdaniel-lawfirm.com
Philip D. Hixon — phixon@ mcdaniel-lawfirm.com
MCDANIEL LAW FIRM

Chris Paul — cpaul@jpm-law.com
JOYCE, PAUL & MCDANIEL PC

Sherry P. Bartley — sbartley@mwsgw.com
MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD PLLC
COUNSEL FOR PETERSON FARMS, INC.

R. Thomas Lay — rtl@kiralaw.com
KERR, IRVINE, RHODES & ABLES

Thomas J. Grever tgrever@lathropgage.com
LATHROP & GAGE, L.C.
Jennifer S. Griffin jgriffin@lathropgage.com
LATHROP & GAGE, L.C.
COUNSEL FOR WILLOW BROOK FOODS, INC.

Robert P. Redemann rredemann@pmrlaw.net
Lawrence W. Zeringue lzeringue@pmrlaw.net
David C .Senger dsenger@pmrlaw.net
PERRINE, MCGIVERN, REDEMANN, REID, BERRY & TAYLOR, PLLC

Robert E. Sanders rsanders@youngwilliams.com
E. Stephen Williams steve.williams@youngwilliams.com
YOUNG WILLIAMS P.A.
COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.

George W. Owens gwo@owenslawfirmpc.com
Randall E. Rose rer@owenslawfirmpc.com
THE OWENS LAW FIRM, P.C.

James M. Graves jgraves@bassettlawfirm.com
Gary V. Weeks gweeks@bassettlawfirm.com
BASSETT LAW FIRM
COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.

John R. Elrod jelrod@cwlaw.com
Vicki Bronson vbronson@cwlaw.com
CONNER & WINTERS, P.C.

Bruce W. Freeman bfreeman@cwlaw.com
D. Richard Funk dfunk@cwlaw.com
CONNER & WINTERS, LLLP
COUNSEL FOR SIMMONS FOODS, INC.

John H. Tucker jtuckercourts@rhodesokla.com
Colin H. Tucker chtucker@rhodesokla.com
Theresa Noble Hill thillcourts@rhodesokla.com
RHODES, HIERONYMUS, JONES, TUCKER & GABLE

Terry W. West terry@thewesetlawfirm.com
THE WEST LAW FIRM

Delmar R. Ehrich dehrich@faegre.com
Bruce Jones bjones@faegre.com
Krisann Kleibacker Lee kklee@faegre.com
Dara D. Mann dmann@faegre.com
FAEGRE & BENSON LLP
COUNSEL FOR CARGILL, INC. AND CARGILL TURKEY PRODUCTION, LLC

I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

C. Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118
COUNSEL FOR PLAINTIFFS

Charles L. Moulton
Arkansas Natural Resources Commission
323 Center Street
Suite 200
Little Rock, AR 72206

/s/ Robert W. George
Robert W. George